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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81 6235

ALBERT "BO" THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO PETITION FOR
WRIT OF CERTIORARI

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APPENDIX A

81 6235

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, ... Respondent,

v.

Albert "Bo" Thompson, ... Appellant.

Appeal From Greenville County
C. Anthony Harris, Judge

Opinion No. 21596
Filed November 23, 1981

AFFIRMED

Chief Attorney John L. Sweeny, of S. C. Commission of Appellate Defense, of Columbia; and Thomas W. Greene and Jerry L. Taylor, both of Greenville, for appellant.

Attorney General Daniel R. McLeod, Assistant Attorney General Lindy P. Funkhouser and Senior Assistant Attorney General Brian P. Gibbes, all of Columbia; and Solicitor William W. Wilkins, Jr., of Greenville, for respondent.

HARWELL, A. J.: Appellant Albert "Bo" Thompson was tried by a jury in Greenville County and convicted of armed robbery and murder. Upon recommendation of the jury, he was sentenced to death. This case consolidates Thompson's direct appeal and mandatory review of the death sentence.

On July 10, 1978, George Toubia was shot and killed during the armed robbery of his small grocery store near Simpsonville, South Carolina. Appellant Thompson and two accomplices were arrested for the crimes. One of the accomplices pled guilty to accessory to murder and armed robbery, and the other pled guilty to murder and armed robbery.

Appellant asserts his convictions should be reversed and that he should be allowed to enter a guilty plea in return for a life sentence because of pretrial plea negotiations. Appellant sought an injunction against the State to prevent it from seeking the death penalty; the motion was denied. Appellant argues he had an enforceable agreement with the State for a sentence of life imprisonment. The State asserts that no agreement was ever reached; that in response to appellant's proposal to plead guilty, the solicitor advised appellant's counsel that he would consider a guilty plea only upon a firm commitment by the accused and that he would discuss the matter with the victim's family before he reached a final decision.

Appellant's attempt to create a firm commitment out of plea negotiations has no merit. Santobello v. New York, 404 U. S. 257, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971) states that "fundamental fairness" forbids the State from seeking the death penalty after plea negotiations. However, Santobello merely stands for the proposition that when an accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled. Here, there was no promise made by the solicitor; there were merely negotiations.

Relying on Cooper v. United States, 594 F. 2d 12 (4th Cir. 1979) appellant argues that even though an express contract had not been reached, his expectations reasonably formed in reliance upon the honor of the government required that the State be enjoined from seeking the death penalty. In Cooper, a firmly advanced proposal had been made to the defendant by an Assistant U. S. Attorney but was withdrawn when the proposal was disapproved by the U. S. Attorney. The 4th Circuit Court of Appeals confined its holding as narrowly as possible to cases where the proposal was specific, unambiguous and made without any reservation. Any plea negotiations between appellant and the State were not specific or unambiguous; there were also two reservations: a firm commitment from the accused and a discussion with the victim's family.

THE STATE v. THOMPSON

Appellant excepts to the application of the Death Penalty Statute to his case. He asserts that S. C. Code Ann. 16-3-20(C) provides no guidelines for the weighing of aggravating and mitigating circumstances. He also argues that the scope of review of death penalty cases is too narrow (comparing only prior capital cases tried under the present death penalty statute) and therefore unconstitutional. Appellant contends that he has a right to access to the cases with which the Supreme Court compares each death sentence; however, Section 16-3-25 of the Code does not provide for the right. Next, he argues that the death penalty constitutes disproportionate punishment in his case. This argument is without merit. Upon entering Mr. Toubia's store to rob him, appellant immediately shot him once. Before leaving the store with the fruits of the crime, appellant shot him again. Appellant also contends that the death penalty was applied arbitrarily and capriciously because it was not sought for his two accomplices. These issues were decided adversely to appellant in State v. Linder, Smith's Advance Sheet, Opinion No. 21452, May 14, 1981 and State v. Shaw, 273 S. C. 194, 255 S. E. 2d 799, cert. denied 444 U. S. 957, 100 S. Ct. 437, 62 L. Ed. 2d 329 (1979), petition for rehearing denied 444 U. S. 1027, 100 S. Ct. 694, 62 L. Ed. 2d 662 (1980), and cert. denied 444 U. S. 1026, 100 S. Ct. 690, 62 L. Ed. 2d 660, petition for rehearing denied 444 U. S. 1104, 100 S. Ct. 1073, 62 L. Ed. 2d 791 (1980).

Next appellant argues that the trial court erred in refusing to strike language in the murder indictment referring to armed robbery as the aggravating circumstance. However, the trial judge found that stating the aggravating circumstance in the indictment merely alleged the circumstances making the murder subject to capital punishment. Appellant alleges that the crime stated in the indictment, murder committed while in the commission of robbery while armed with a deadly weapon, is no longer a crime in South Carolina because the 1974 version of Section 16-3-20 was declared unconstitutional; therefore, the indictment was improper. It was not prejudicial to inform the appellant of the aggravating circumstance which the State sought to prove. Appellant also argues that the indictment was improper for stating the aggravating circumstance because it, in effect, charged felony murder; thus the underlying felony (armed robbery) merged with the felony murder and could not be submitted to the jury as an aggravating circumstance in the sentencing phase of the trial. However, appellant concedes that the trial judge did not charge the felony murder rule. In addition, South Carolina adheres to the common law rule of murder and makes no distinction between murder and felony murder. State v. Judge, 208 S. C. 497, 38 S. E. 2d 715 (1946). Therefore, a statutory aggravating circumstance would remain a circumstance of the murder in a death penalty case regardless of whether the crime charged is murder or felony murder. There was no error in the indictment.

Appellant's next argument is that the trial judge erred in not charging the jury on involuntary manslaughter and felony murder. We disagree. The appellant can claim no prejudice by the failure of the court to charge the felony-murder doctrine which raises a presumption of malice on the part of the appellant. A charge of involuntary manslaughter would have been improper, also, as there was no evidence to support the charge. State v. Jones, 273 S. C. 723, 259 S. E. 2d 120 (1979). When we review a jury charge for error, we consider it as a whole in light of the evidence presented during the trial. State v. Hyman, Smith's Advance Sheet Opinion No. 21524, filed July 22, 1981; State v. Tucker, 273 S. C. 736, 259 S. E. 2d 414 (1979). There were two shots fired into the victim. Although there was testimony that the first shot fired by appellant was an "accident", there was also testimony that appellant fired the second shot deliberately to insure the victim's death. We have held that it is only necessary to charge a lesser included offense when there is evidence tending to show that only such lesser crime was committed. State v. Mickle, 273 S. C. 71, 254 S. E. 2d 295 (1979); State v. Funchess, 267 S. C. 427, 229 S. E. 2d 331 (1976). Therefore, it was not error to refuse to charge involuntary manslaughter when at least one of the two shots was fired deliberately.

Appellant contends that the trial court violated Section 16-3-20(E) in excusing four jurors for cause who were unalterably opposed to capital punishment. There is no error. The trial judge had a reasonable basis to conclude that the potential jurors could not faithfully carry out their duties under the law. State v. Hyman, supra; State v. Linder, supra; State v. Goolsby, 275 S. C. 110, 268 S. E. 2d 31 (1980). Appellant also claims that certain prospective jurors should have been disqualified for cause because of their general opinions in favor of the death penalty. A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence. Section 14-7-1020 of the Code. State v. Franklin, 267 S. C. 240, 226 S. E. 2d 896 (1976); State v. Watkins, 259 S. C. 185, 191 S. E. 2d 135 (1972). The testimony of these jurors demonstrated that each could

render an impartial verdict according to law; therefore, they were qualified. State v. Linder, supra; State v. Goolsby, supra; State v. Tyner, 273 S. C. 646, 258 S. E. 2d 359 (1979).

Appellant alleges that the trial judge erred by denying his motion for a change of venue due to pretrial publicity. Several days prior to appellant's trial, he and an inmate were involved in an altercation. Several newspapers, radio and television stations reported the incident. Several local attorneys testified for the appellant that they did not believe he could receive a fair trial in the Greenville area. The trial judge denied appellant's motion for a change of venue but stated that he would entertain the motion after voir dire examination if an impartial panel could not be obtained. After extensive voir dire proceedings, the trial judge concluded that an impartial jury had been seated. Where the trial judge bases his ruling on adequate voir dire examination of the jurors, his conclusion will not be disturbed absent extraordinary circumstances. State v. Neeley, 271 S. C. 33, 244 S. E. 2d 522 (1978); State v. Fowler, 266 S. C. 203, 222 S. E. 2d 297 (1976); State v. Crowe, 258 S. C. 258, 188 S. E. 2d 379, cert. denied, 409 U. S. 1077, 93 S. Ct. 691, 34 L. Ed. 2d 666 (1972). The record reveals that the trial judge took every precaution to insure the elimination of potential jurors that may have been prejudiced by the pretrial publicity, and the absence of prejudice on the part of those chosen to serve. No prejudice or abuse of discretion is shown.

Next appellant alleges that he was prejudiced by the lower court's refusal at a pretrial hearing to require a journalist to divulge her confidential informant concerning appellant's attack on a jailhouse inmate. The identity of the informant was irrelevant; it had no bearing on whether any of the prospective jurors were aware of the pretrial publicity.

Appellant also argues that his preliminary hearing was so structured that he was denied effective assistance of counsel. The State introduced only one witness at the hearing; a police officer read an accomplice's statement into the record. Appellant argues he was thus deprived of the right to cross examination and discovery of the State's witnesses. This issue was resolved against appellant in State v. Thompson, Smith's Advance Sheet, Opinion No. 21542, filed August 6, 1981, in which we held that the absence of direct testimony was not prejudicial to an accused since he was apprised of the nature of the State's evidence. See also, State v. Jones, supra.

Appellant also claims that the trial judge erred in not disqualifying for cause certain prospective jurors. One prospective juror initially indicated she thought law enforcement officers were more credible than ordinary people; however, she clearly stated to the court that she would follow its instructions concerning credibility of witnesses. Another prospective juror expressed misgivings about her opinion if the defendant chose not to testify; but once the court advised her more fully concerning the accused's right not to testify, she indicated that she would follow the court's instructions regarding the defendant's choice not to take the stand. The third prospective juror had been privy to erroneous information concerning appellant's case; he stated to the court that he had formed no opinion as to the guilt or innocence of the defendant and that he would give the defendant a fair trial based on the presented evidence. The trial court determined that all three of the challenged jurors were qualified. Because we do not have the benefit of observing first hand the character and demeanor of the jurors as did the trial judge, we rely on his wisdom and judgment unless the record firmly establishes an abuse of discretion. State v. Thomas, 268 S. C. 343, 234 S. E. 2d 16 (1977); DeLee v. Knight, 266 S. C. 103, 221 S. E. 2d 844 (1975). There was no abuse of discretion.

Next appellant argues that the jury panel should have been quashed because members of his race were systematically excluded from service on the grand jury and the petit jury. He alleges that the use of voter registration rolls in selecting the petit jury venire violated his rights under the Sixth Amendment of the U. S. Constitution and Article I, Section 14 of the South Carolina Constitution. This issue was resolved against the appellant in State v. Hyman, supra. Castaneda v. Partida, 430 U. S. 482, 97 S. Ct. 1272, 51 L. Ed. 2d 498 (1977) held that an appellant must demonstrate that a disproportionate representation arose from a purposeful discrimination against an identifiable group in order to present a prima facie case on this issue. Appellant has made no showing that there was any systematic effort by the jury commissioners in Greenville County to exclude blacks.

Next, appellant argues that the trial judge erred in ruling that Section 14-7-1020 limited his attorneys on voir dire. He contends that Section 16-3-20(D), which allows defense counsel to examine the potential jurors, allows his counsel unlimited voir dire in a capital murder case. The method and scope of voir dire is within the trial court's discretion. State v. Tyner, supra; State v. Dawkins, 268 S. C. 110, 232 S. E. 2d 228 (1977). The record reveals that appellant's counsel was permitted to ask relevant questions. Appellant has not demonstrated that the trial court abused its discretion.

Appellant also argues that testimony by several witnesses that appellant was in South Carolina after the date he claimed to have left was an impermissible attack on his character. Although a state may not attack a criminal defendant's character unless he places it in issue, relevant evidence properly admissible for other purposes may not be excluded merely because it incidentally reflects on his character. State v. Thompson, supra; State v. Faulkner, 274 S. C. 619, 266 S. E. 2d 420 (1980). False and conflicting statements and attempts to run away are evidence of guilty knowledge and intent. State v. Thompson, supra; Town of Hartsville v. Munger, 93 S. C. 527, 77 S. E. 219 (1913). The statements were introduced to prove appellant attempted to avoid apprehension. There is no error.

During an accomplice's testimony at trial, the wife of the deceased victim had a "fainting spell". The trial judge excused the jury while the victim's wife was assisted from the courtroom. Appellant alleges that the trial judge should have granted a mistrial because the jury could have been in sight of the victim's wife as they were leaving through separate doors. We have held that the conduct of a trial is left largely to the discretion of the presiding judge, and this Court will not interfere unless the rights of the complaining party were abused or prejudiced. State v. Lee, 255 S. C. 309, 178 S. E. 2d 652 (1971); State v. Gidron, 211 S. C. 360, 45 S. E. 2d 587 (1947); State v. McGill, 191 S. C. 1, 3 S. E. 2d 257 (1939). No abuse of discretion appears from the record.

Finally, appellant argues the trial court erred in quashing the subpoena duces tecum issued for the Director of the South Carolina Department of Corrections, directing him to bring the electric chair to the courtroom. The appellant alleges that the process of electrocution is evidence in mitigation of the punishment and should have been presented to the jury under Section 16-3-20(B). Our Legislature has determined that capital punishment shall be imposed by electrocution. Section 24-3-530. The manner or nature of capital punishment has been removed from consideration of juries; the Death Penalty Statutory Complex focuses the sentencing authorities' attention on the nature of the crime and the characteristics of the individual defendant. State v. Shaw, supra. Therefore, the process of the punishment is irrelevant; the trial court committed no error in refusing to admit the evidence.

We have carefully reviewed the entire record (over 1450 pages) for prejudicial error overlooked by counsel. We find none, and therefore, affirm the conviction and sentence of death of appellant Albert "Bo" Thompson.

LEWIS, C.J., LITTLEJOHN, NESS, and GREGORY, JJ., concur.

APPENDIX B

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, ... Respondent,

v.

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C. Anthony Harris, Judge

CORRECTED
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Appellant asserts his convictions should be reversed and that he should be allowed to enter a guilty plea in return for a life sentence because of pretrial plea negotiations. Appellant sought an injunction against the State to prevent it from seeking the death penalty; the motion was denied. Appellant argues he had an enforceable agreement with the State for a sentence of life imprisonment. The State asserts that no agreement was ever reached; that in response to appellant's proposal to plead guilty, the solicitor advised appellant's counsel that he would consider a guilty plea only upon a firm commitment by the accused and that he would discuss the matter with the victim's family before he reached a final decision.

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[1] In compliance with the mandate of §16-3-25(E) and considering both the crime and the defendant, we have determined that the sentence of death is neither excessive nor disproportionate to the penalty imposed in similar cases. State v. Shaw, et al., 273 S.C. 194, 255 S.E.2d 799 (1979); State v. Hyman, ___S.C.___, 281 S.E.2d 209 (1981); State v. Gilbert, et al., Op. No. 21562, filed September 14, 1981. The transcripts, briefs and opinions in those cases used for comparison purposes are public records; thus, the defendant in fact has access to the same information available to the Court.

error. The trial judge had a reasonable basis to conclude that the potential jurors could not faithfully carry out their duties under the law. State v. Hyman, supra; State v. Linder, supra; State v. Goolsby, 275 S. C. 110, 268 S. E. 2d 31 (1980). Appellant also claims that certain prospective jurors should have been disqualified for cause because of their general opinions in favor of the death penalty. A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence. Section 14-7-1020 of the Code. State v. Franklin, 267 S. C. 240, 226 S. E. 2d 896 (1976); State v. Watkins, 259 S. C. 185, 191 S. E. 2d 135 (1972). The testimony of these jurors demonstrated that each could render an impartial verdict according to law; therefore, they were qualified. State v. Linder, supra; State v. Goolsby, supra; State v. Tyner, 273 S. C. 646, 258 S. E. 2d 359 (1979).

Appellant alleges that the trial judge erred by denying his motion for a change of venue due to pretrial publicity. Several days prior to appellant's trial, he and an inmate were involved in an altercation. Several newspapers, radio and television stations reported the incident. Several local attorneys testified for the appellant that they did not believe he could receive a fair trial in the Greenville area. The trial judge denied appellant's motion for a change of venue but stated that he would entertain the motion after voir dire examination if an impartial panel could not be obtained. After extensive voir dire proceedings, the trial judge concluded that an impartial jury had been seated. Where the trial judge bases his ruling on adequate voir dire examination of the jurors, his conclusion will not be disturbed absent extraordinary circumstances. State v. Neeley, 271 S. C. 33, 244 S. E. 2d 522 (1978); State v. Fowler, 266 S. C. 203, 222 S. E. 2d 297 (1976); State v. Crowe, 258 S. C. 258, 188 S. E. 2d 379, cert. denied, 409 U. S. 1077, 93 S. Ct. 691, 34 L. Ed. 2d 666 (1972). The record reveals that the trial judge took every precaution to insure the elimination of potential jurors that may have been prejudiced by the pretrial publicity, and the absence of prejudice on the part of those chosen to serve. No prejudice or abuse of discretion is shown.

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Appellant also argues that his preliminary hearing was so structured that he was denied effective assistance of counsel. The State introduced only one witness at the hearing; a police officer read an accomplice's statement into the record. Appellant argues he was thus deprived of the right to cross examination and discovery of the State's witnesses. This issue was resolved against appellant in State v. Thompson, Smith's Advance Sheet, Opinion No. 21542, filed August 6, 1981, in which we held that the absence of direct testimony was not prejudicial to an accused since he was apprised of the nature of the State's evidence. See also, State v. Jones, supra.

Appellant also claims that the trial judge erred in not disqualifying for cause certain prospective jurors. One prospective juror initially indicated she thought law enforcement officers were more credible than ordinary people; however, she clearly stated to the court that she would follow its instructions concerning credibility of witnesses. Another prospective juror expressed misgivings about her opinion if the defendant chose not to testify; but once the court advised her more fully concerning the accused's right not to testify, she indicated that she would follow the court's instructions regarding the defendant's choice not to take the stand. The third prospective juror had been privy to erroneous information concerning appellant's case; he stated to the court that he had formed no opinion as to the guilt or innocence of the defendant and that he would give the defendant a fair trial based on the presented evidence. The trial court determined that all three of the challenged jurors were qualified. Because we do not have the benefit of observing first hand the character and demeanor of the jurors as did the trial judge, we rely on his wisdom and judgment unless the record firmly establishes an abuse of discretion. State v. Thomas, 268 S. C. 343, 234 S. E. 2d 16 (1977); DeLee v. Knight, 266 S. C. 103, 221 S. E. 2d 844 (1975). There was no abuse of discretion.

Next appellant argues that the jury panel should have been quashed because members of his race were systematically excluded from service on the grand jury and the petit jury. He alleges that the use of voter registration rolls in selecting the petit jury venire violated his rights under the Sixth Amendment of the U. S. Constitution

and Article I, Section 14 of the South Carolina Constitution. This issue was resolved against the appellant in State v. Hyman, supra. Castaneda v. Partida, 430 U. S. 482, 97 S. Ct. 1272, 51 L. Ed. 2d 498 (1977), held that an appellant must demonstrate that a disproportionate representation arose from a purposeful discrimination against an identifiable group in order to present a prima facie case on this issue. Appellant has made no showing that there was any systematic effort by the jury commissioners in Greenville County to exclude b[illegible]s.

Next, appellant argues that the trial judge erred in ruling that Section 14-7-1020 limited his attorneys on voir dire. He contends that Section 16-3-20(D), which allows defense counsel to examine the potential jurors, allows his counsel unlimited voir dire in a capital murder case. The method and scope of voir dire is within the trial court's discretion. State v. Tyner, supra; State v. Dawkins, 268 S. C. 110, 232 S. E. 2d 228 (1977). The record reveals that appellant's counsel was permitted to ask relevant questions. Appellant has not demonstrated that the trial court abused its discretion.

Appellant also argues that testimony by several witnesses that appellant was in South Carolina after the date he claimed to have left was an impermissible attack on his character. Although a state may not attack a criminal defendant's character unless he places it in issue, relevant evidence properly admissible for other purposes may not be excluded merely because it incidentally reflects on his character. State v. Thompson, supra; State v. Faulkner, 274 S. C. 619, 266 S. E. 2d 420 (1980). False and conflicting statements and attempts to run away are evidence of guilty knowledge and intent. State v. Thompson, supra; Town of Hartsville v. Munger, 93 S. C. 527, 77 S. E. 219 (1913). The statements were introduced to prove appellant attempted to avoid apprehension. There is no error.

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Finally, appellant argues the trial court erred in quashing the subpoena duces tecum issued for the Director of the South Carolina Department of Corrections, directing him to bring the electric chair to the courtroom. The appellant alleges that the process of electrocution is evidence in mitigation of the punishment and should have been presented to the jury under Section 16-3-20(B). Our Legislature has determined that capital punishment shall be imposed by electrocution. Section 24-3-530. The manner or nature of capital punishment has been removed from consideration of juries; the Death Penalty Statutory Complex focuses the sentencing authorities' attention on the nature of the crime and the characteristics of the individual defendant. State v. Shaw, supra. Therefore, the process of the punishment is irrelevant; the trial court committed no error in refusing to admit the evidence.

We have carefully reviewed the entire record (over 1450 pages) for prejudicial error overlooked by counsel. We find none, and therefore, affirm the conviction and sentence of death of appellant Albert "Bo" Thompson.

LEWIS, C.J., LITTLEJOHN, NESS and GREGORY, JJ., concur.

The Supreme Court of South Carolina

The State,

Respondent,

v.

Albert "Bo" Thompson,

Appellant.

ORDER

Appellant Albert "Bo" Thompson has petitioned for a rehearing of his appeal in which this Court affirmed his conviction and sentence of death.

The petition points out that the Court failed to list in its opinion the cases which were used for comparison in considering whether appellant's sentence was excessive or disproportionate to the penalty imposed in similar cases. To correct this inadvertent omission, the following modification should be made to the opinion in State v. Albert "Bo" Thompson, Op. No. 21596, filed November 23, 1981.

On page four (4), first paragraph, line eleven (11), after the word "again.", add the number one (1). At the bottom of page four (4), add the following footnote:

> [1]In compliance with the mandate of §16-3-25(E) and considering both the crime and the defendant, we have determined that the sentence of death is neither excessive nor disproportionate to the penalty imposed in similar cases. State v. Shaw, et al., 273 S.C. 194, 255 S.E.2d 799 (1979); State v. Hyman, ____S.C.____, 281 S.E.2d 209 (1981); State v. Gilbert, et al., Op. No. 21562, filed September 14, 1981. The transcripts, briefs and opinions in those cases used for comparison purposes are public records; thus, the defendant in fact has access to the same information available to the Court.

In all other respects, appellant's Petition for Rehearing is denied.

Appellant's Motion for Stay of Remittitur in the above matter is granted for a period of sixty (60) days pending the filing of a Petition for Writ of Certiorari in the United States Supreme Court, and thereafter until final disposition is made by that Court.

C.J.

A.J.

A.J.

Columbia, S. C.

December 22, 1981

CERTIFIED TRUE COPY.

Deputy Clerk, S. C. Supreme Court

§ 16–3–20. Punishment for murder.

Whoever is guilty of murder under the following circumstances shall suffer the penalty of death:

(1) Murder committed while in the commission of the following crimes or acts: (a) rape; (b) assault with intent to ravish; (c) kidnapping; (d) burglary; (e) robbery while armed with a deadly weapon; (f) larceny with use of a deadly weapon; (g) housebreaking; (h) killing by poison; (i) lying in wait.

(2) Murder committed for hire based on some consideration of value.

(3) Murder of a law-enforcement officer or correctional officer while acting in the line of duty.

(4) The person convicted of committing the murder had previously been convicted of murder, or was convicted of committing more than one murder.

(5) Murder that is willful, deliberate and premeditated.

Whoever is guilty of murder under any other circumstance shall suffer the penalty of life imprisonment. *Provided, however,* that notwithstanding the provisions of this section, under no circumstances shall a female who is pregnant with child be executed so long as she is in that condition.

HISTORY: 1962 Code § 16-52; 1952 Code § 16-52; 1942 Code § 1102; 1932 Code § 1102; Cr. C. '22 § 2; Cr. C. '12 § 136; Cr. C. '02 § 109; G. S. 2454; R. S. 109; 1868 (14) 175; 1894 (21) 785; 1974 (58) 2361.

§ 16–3–25. Punishment for murder: review by Supreme Court of imposition of death penalty.

(A) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of South Carolina together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court of South Carolina.

(B) The Supreme Court of South Carolina shall consider the punishment as well as any errors by way of appeal.

(C) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and

(2) Whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in § 16–3–20, and

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(D) Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral arguments to the court.

(E) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court of South Carolina in its decision, and the extracts prepared as hereinafter provided for, shall be provided to the resentencing judge for his consideration. If the court finds error prejudicial to the defendant in the sentencing proceeding conducted by the trial judge before the trial jury as outlined under Item (B) of § 16–3–20, the court may set the sentence aside and remand the case for a resentencing proceeding to be conducted by the same or a different trial judge and by a new jury impaneled for such purpose. In the resentencing proceeding, the new jury, if the defendant does not waive the right of a trial jury for the resentencing proceeding, shall hear evidence in extenuation, mitigation or aggravation of the punishment in addition to any evidence admitted in the defendant's first trial relating to guilt for the particular crime for which the defendant has been found guilty.

(F) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on all legal errors, the factual substantiation of the verdict, and the validity of the sentence.

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81 6235

ALBERT "BO" THOMPSON,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT.

AFFIDAVIT OF ALBERT "BO" THOMPSON IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, ALBERT "BO" THOMPSON, being first duly sworn, depose and say that I am the Petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? "No."

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

   July 1978 - $416.00 per month

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NO. 81 6235

ALBERT "BO" THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

Petitioner, Albert "Bo" Thompson, respectfully moves this Court for leave to proceed herein in forma pauperis, in accordance with the provisions of Title 28, United States Code, Section 1915, and Rule 46 of this Court. The Affidavit of Petitioner in support of this Motion is attached hereto.

Presented herewith is a Petition for Writ of Certiorari of the moving party.

Respectfully Submitted,

THOMAS W. GREENE
JERRY L. TAYLOR

BY: _____
Attorneys for Petitioner

12 Lavinia Avenue
Greenville, South Carolina 29601

February 17, 1982.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? "No."

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? "No."

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? "No."

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. "None."

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Albert B Thompson
ALBERT "BO" THOMPSON

SWORN to and subscribed before me
this 5th day of February, 1982.

D. J. Taylor (LS)
Notary Public for South Carolina
My Commission Expires: 4-21-90